

**VIRGINIA CODE COMMISSION**  
General Assembly Building, 6th Floor  
Speakers Conference Room  
910 Capitol Street  
Richmond, Virginia 23219

*Wednesday, May 21, 2003 - 10:00 a.m.*

MEMBERS PRESENT:

William J. Howell, Chairman  
William C. Mims, Vice Chairman  
R. Steven Landes  
John S. Edwards  
Randall G. Johnson  
Diane Strickland  
Frank S. Ferguson  
Thomas M. Moncure, Jr.  
E.M. Miller, Jr.

STAFF PRESENT:

Jane Chaffin  
Amy Marschean  
Bess Hodges  
Suzan Bulbulkaya  
Ginny Edwards  
Frank Munyan

MEMBERS ABSENT:

Robert L. Calhoun

OTHERS PRESENT:

Russ Armstrong, Geronimo Corporation  
Eric Finkbeiner, McGuire Woods (for LexisNexis)  
Martha Moore

**CALL TO ORDER AND INTRODUCTIONS**

Chairman William J. Howell called the meeting to order at 10:15 a.m. The Commission welcomed Judge Randall G. Johnson of Richmond City Circuit Court, who was appointed by the Governor to replace the expired term of Judge James B. Wilkinson.

**ELECTION OF CHAIR AND VICE CHAIR**

Speaker Howell opened the floor for nominations of Chairman of the Code Commission. Delegate Landes nominated Senator Mims. Frank Ferguson seconded the motion and the motion carried. The Commission voted unanimously to instate Senator Mims as chairman.

Senator Mims assumed the duties of chairman and opened the floor for nominations of vice chairman. Speaker Howell nominated Delegate Landes. Judge Strickland seconded the motion and the motion carried. The Commission unanimously voted to instate Delegate Landes as vice chairman.

**CHAIRMAN'S COMMENTS**

Senator Mims thanked the Speaker for his leadership of the Commission over the past few years and for continuing to serve on the Commission.

**REVIEW AND APPROVAL OF MINUTES**

Mr. Miller made a motion, seconded by Mr. Ferguson, to approve the minutes of the December 3, 2002 meeting as written. The motion was approved.

**CERTIFICATE PRESENTATION**

1 Senator Mims recognized Amy Marschean's excellent work on the recodification of Title  
2 63.1 by presenting her with a certificate of appreciation signed by the members of the  
3 Code Commission. Ms. Marschean also received a bound volume of the final report  
4 embossed with her name.

5 **2003 LEGISLATIVE UPDATE**

6 Frank Munyan updated the Commission on the Title 25 recodification, which was  
7 approved for introduction to the General Assembly at the December meeting. The report  
8 was published as Senate Document 16 and Senator Mims carried the legislation (Senate  
9 Bill 1007). The Senate Courts of Justice Committee reported the legislation with thirteen  
10 amendments as follows: four amendments were technical corrections; the other nine  
11 amendments rewrote the provisions of §§ 33.1-124 and 33.1-128 pertaining to interest  
12 on funds from the time a certificate of deposit is filed until the funds are paid into court,  
13 and interest on amounts of wards that are greater or lesser than amounts actually  
14 awarded, in Commonwealth Transportation Commissioner condemnations. The  
15 amendments pertaining to accrual of interest were made to conform to House Bill 1950  
16 (Delegate Drake) at the suggestion of the Attorney General's office. As introduced, the  
17 bill provided that interest would accrue at the general account's primary liquidity portfolio  
18 rate for the month in which the order is entered. As amended, interest will accrue at the  
19 rate established pursuant to § 6621(a)(2) of the Internal Revenue Code for the month in  
20 which the order is entered. Under § 6621(a)(2), the rate of interest is determined on a  
21 quarterly basis. The overpayment and underpayment rate is the federal short-term rate  
22 plus three percentage points. The interest rate amendments avoided major substantive  
23 conflicts with House Bill 1950; however, the interest rate on awards under §§ 25.1-242,  
24 25.1-243, 25.1-244, 25.1-310, 25.1-315 and 25.1-316 will be calculated using the  
25 general account's primary liquidity portfolio rate as recommended by the Code  
26 Commission. Also, the amendments continue the disparity in interest rate calculation  
27 methodologies depending on whether the condemnor is the Commonwealth  
28 Transportation Commissioner.

29 Amy Marschean updated the Commission on the Title 63.2 technical corrections  
30 legislation (Senate Bill 1101). The majority of the comments and corrections came from  
31 the Department of Social Services. Some concerns with an amendment to § 63.2-1724  
32 were resolved by adding language exempting a parent or guardian from certain  
33 disclosure requirements. With the amendment, the bill passed unanimously.

34 Jane Chaffin advised the Commission of the status of the nine bills that were introduced  
35 to repeal obsolete acts of assembly and statutory provisions as required by § 30-151 of  
36 the Code of Virginia. With the exception of House Bill 1476, which repealed the 1960 act  
37 that created the Rudee Inlet Authority, the repeal legislation passed. At the request of  
38 the Virginia Beach city manager's office, Delegate Landes requested that House Bill  
39 1476 be stricken from the docket. Staff will follow up with the City of Virginia Beach and  
40 make further recommendations concerning this authority at a future meeting.

41 House Bill 2550 was introduced as a cost-saving measure. The legislation codified the  
42 practice of publishing the Virginia Register on the Internet, repealed the provision  
43 requiring distribution of free copies to certain state and local entities, provided the  
44 Commission with more flexibility for entering into contracts for printing the Register, and  
45 eliminated the provision requiring the Commission to approve subscription and  
46 distribution fees. House Bill 2550 passed and became Chapter 212 of the 2003 Acts of  
47 Assembly.

1 Bess Hodges advised the members that the Fast-Track Rulemaking legislation, carried  
2 by Senator Mims passed with one amendment. The legislation, based on an  
3 Administrative Law Advisory Committee (ALAC) recommendation, provides for a shorter  
4 regulatory process for noncontroversial regulations. An amendment to the introduced bill  
5 provides that agencies notify certain legislative committees that the fast track process is  
6 being utilized.

7 Frank Ferguson asked for clarification about whether ALAC continues to exist. Mr. Miller  
8 responded that the Bar Association will pick up ALAC's work plan and responsibilities,  
9 but existing ALAC membership will be utilized. The funding was relinquished in an effort  
10 to save money. The immediate plan is to reinstitute ALAC within the next couple of  
11 years. Mr. Miller asked Bess Hodges to go over ALAC's current agenda items. Ms.  
12 Hodges stated that the annual Administrative Law Conference was held earlier in the  
13 spring. The conference was well reviewed and profitable. ALAC had an aggressive  
14 agenda, which included an Administrative Law Judge (ALJ) study and an Administrative  
15 Process Act exemptions study. The ALJ study has been put on hold for the time being,  
16 but ALAC is proceeding with the exemptions study. Mr. Ferguson stated that he would  
17 like ALAC to look at whether it remains a good policy to have administrative appeals to  
18 Court of Appeals be an appeal of right or writ process. Ms. Hodges responded that this  
19 issue would dovetail with ALAC's Appeal of Agency Decisions Subcommittee, which is  
20 reviewing Rule 2A of Supreme Court. Senator Mims suggested reviewing the issue at  
21 the next meeting.

## 22 **TITLE 1 RECODIFICATION (GENERAL PROVISIONS)**

23 Ginny Edwards presented background information and a proposed work plan for the  
24 Title 1 recodification. Ms. Edwards went over the lessons learned from the 1965  
25 recodification of this title. It was concluded at that time that a wholesale revision of the  
26 title was not necessary. The title is unique in several respects in that Chapter 1 is basic  
27 to and inseparable from the 1948 act, which brought into existence the present Code of  
28 Virginia. Any amendment would invite interpretation as of the date of amendment or  
29 reenactment rather than the date of original enactment. Therefore, it was recommended  
30 that no change be made to Chapter 1.

31 Ms. Edwards stated that § 1-4 of Chapter 1 was amended during the 1971 Special  
32 Session to include a statutory construction rule to address the effect of the revision or  
33 amendment of the Constitution of Virginia. The insertion of the new rule changed the  
34 context of the section. Ms. Edwards suggested that the new rule should have been set  
35 out in another chapter and section because Chapter 1 was dedicated to the effect of the  
36 adoption of the Code of 1948. She suggested restoring this section to its original  
37 purpose and moving the provision dealing with the Constitution into another section.

38 Ms. Edwards advised the Commission of two options to consider regarding the revision  
39 of Title 1. The first option is to revise Title 1 without additions. Option 2 is to revise Title 1  
40 and look at bringing in provisions from other titles, such as Title 7.1, legal holidays from  
41 Title 2.2, and certain Code Commission provisions from Title 30. Ms. Edwards indicated  
42 that if option 2 was selected, the Commission might consider taking two years to  
43 complete this project.

44 After discussion and based on a motion made by Delegate Landes and seconded by  
45 Senator Edwards, the Commission decided to revise the schedule for completing Title 1  
46 to two years. The first year would be spent revising existing Title 1 and the second year

1 would entail adding other appropriate provisions to Title 1 and modifying any other titles,  
2 as necessary. The motion carried.

3 Ms. Edwards provided a couple of options for handling this recodification. Since Chapter  
4 1 cannot be renumbered or amended based on staff's analysis as mentioned earlier, a  
5 decision needs to be made whether to repeal the remaining chapters in Title 1 and  
6 create them under a new Title 1.1 or repeal the remaining chapters in Title 1 and create  
7 new chapters within that title. Mr. Ferguson moved to amend existing Title 1 and to avoid  
8 creating a new Title 1.1. Mr. Miller seconded the motion and it was approved.

### 9 **TITLE 3.1 RECODIFICATION**

10 After a brief introduction by Mr. Miller, Sue Bulbulkaya began by explaining that the  
11 Commission began the Title 3.1 recodification three years ago. The study was deferred  
12 after the resignation of the staff person assigned to the project.

13 This title was last revised in 1966 and is currently not well organized. Currently, 18  
14 repealed chapters are contained in the title and a couple of additional chapters have  
15 been identified to propose for repeal. Ms. Bulbulkaya guided the Commission through  
16 the proposed outline, which had been modified slightly since it was approved three years  
17 ago. The five recommended subtitles are: Subtitle I, General Provisions; Protection and  
18 Promotion of Agriculture; Subtitle II, Boards, Councils and Foundations; Subtitle III,  
19 Production and Sale of Agricultural Products; Subtitle IV, Food and Drink; Weights and  
20 Measures; and Subtitle V, Animal Laws.

### 21 **TITLE 37.1 RECODIFICATION**

22 Amy Marschean distributed the proposed outline for new Title 37.2. She stated that a  
23 task force of 19 individuals had previously been approved by the Commission. Title 37.1  
24 was last recodified in 1968. Many provisions have not been amended in 20 to 30 years.  
25 Ms. Marschean briefly went over the recommended subtitles. Subtitle I will contain  
26 general provisions; Subtitle II will cover mental health, mental retardation and substance  
27 services (i.e., community services boards and behavioral health facilities, and the  
28 possible addition of state facilities, which are currently not included); Subtitle III will cover  
29 admissions and dispositions in general; and Subtitle IV will cover guardianship and  
30 conservatorship. She indicated that there were provisions that are repeal candidates,  
31 such as Article 5 of Chapter 1, Treatment Centers for Children, and Chapter 3, Persons  
32 Not Confined in State Hospitals.

### 33 **OTHER BUSINESS**

#### 34 Update on Virginia Register Printing Contract

35 Mr. Miller reported on the status of a contract that arranges for the printing of the Virginia  
36 Register with minimal or no cost to the Commonwealth. As a result of Chapter 212,  
37 which passed this past session, the Internet posting of the Virginia Register became the  
38 only required publication and gave the Commission some flexibility with regards to  
39 contracting with an outside printer for hard copy publication. A contract was entered into  
40 with Weil Publishing, a company based in Augusta, Maine, that publishes many other  
41 states' administrative registers and administrative codes. Virginia Register staff will  
42 provide Weil with a print-ready .pdf file every two weeks that Weil will print and distribute.  
43 The downside of the contract was the payment by the state of \$10,000 to Weil to fulfill  
44 existing subscriptions. This money was initially paid to us by subscribers and otherwise  
45 would have been reimbursed to each individual subscriber on a prorated basis. Next

1 year a minimum of \$30,000 should be saved. Staff workload will remain the same for  
2 preparation of the Register; however, staff will no longer maintain subscriptions, market,  
3 or prepare an index. The term of the contract is five years, but Weil has the option of  
4 backing out after one year if the company decides that the venture is not profitable.  
5 Before terminating the contract, Weil must provide a 60-day notice of termination. Weil  
6 controls subscription fees.

7 Legislative Record—Notice of Certain Regulations

8 Mr. Miller advised the Commission of a new addition to the Legislative Record. To keep  
9 legislators informed of regulatory actions, the Division is now including a “Regulatory  
10 Alert” section. After regulations are filed by an agency, Bess Hodges is summarizing the  
11 action for inclusion in Legislative Record.

12 Future Meeting Dates

13 The Commission set the following dates for future meetings: June 18, August 20,  
14 September 17, October 22, November 19, and December 17.

15 **PUBLIC COMMENT AND ADJOURNMENT**

16 No one came forward to speak during the public comment period.

17 There being no further business to come before the Commission, the Chairman  
18 adjourned the meeting at 12:40 p.m.